

**IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD**

(Special Original Jurisdiction)

THURSDAY, THE THIRTIETH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION NO : 13283 of 2004

Between:

S.A. Rahiman, Driver E. 73750,

S/o. Masoomiya,
R/o. H.No. 41/472-2A,

Kothapeta, Kurnool District.

..... PETITIONER

AND

1 The Vice Chairman & Managing Director,

APSRTC., Musheerabad,

Hyderabad.

2 The Regional Manager,

APSRTC, Kurnool Region,

Kurnool District.

3 The Depot Manager,

APSRTC, Kurnool-I Bus Depot,

Kurnool District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order, direction or writ more particularly one in the nature of Writ of Mandamus declaring the action of the 3rd respondent in issuing the proceedings No. P2/255(4)/2004-KRN-I dt. 26-7-2004 as illegal, arbitrary and unjust and consequently set aside the proceedings No. P2/255(4)/2004-KRN-I dt. 26-7-2004 issued by the 3rd respondent and direct the respondents to treat the petitioner's date of Birth as 15-6-1947.

Counsel for the Petitioner: Mr. G.RAVI MOHAN

Counsel for the Respondents: Mr. P.VINAYAKA SWAMY

(SC FOR APSRTC)

The Court made the following ORDER:

Petitioner questions the order of the 3rd respondent-Depot Manager, APSRTC., Kurnool Depot dated 26-7-2004 in ordering to retire the petitioner with retrospective effect from 30-6-2004 on the ground that his actual date of birth shall be taken as 14-6-1946.

Petitioner was appointed as a driver in the respondent corporation vide its proceedings dated 21-3-1978. Admittedly, the petitioner has not produced any school record in proof of his correct date of birth.

It is the case of the petitioner that he has furnished the date of birth at the time of his appointment as '14-6-1946'. But in the Attestation Form and in the Form-A, his date of birth was mentioned as '15-6-1947'. If that be so, he will be retiring in the month of June, 2005 alone. As there was a discrepancy in furnishing two dates of birth, one as '14-6-1946' and another as '15-6-1947', he was referred to the Medical Officer for determination of his date of birth and the Medical Officer assessed his date of birth as '3-3-1948'.

As per Clause 19(2)(b) of the Service Regulations, 1964 where a person concerned is unable to furnish the satisfactory evidence of his age, it should be assessed by the Medical Officer of the Corporation and the age so assessed or the age declared by the person, whichever is more shall be accepted as final and

employee shall be assumed to have completed that age on the date of the attestation by the Medical Officer.

Admittedly, petitioner was subjected to the medical examination for determination of his age, at the time of his entering into service and the Medical Officer certified his date of birth as 3-3-1948 and as that date is beneficial to the petitioner, the Corporation has taken his date of birth which is older than the date of birth assessed by the Medical Officer and accordingly, the date of birth was taken as 15-6-1947.

Learned counsel for the petitioner submits that when once the date of birth was entered into the Service record, the same shall become final and without issuing any notice to the petitioner and without providing any opportunity, the 3rd respondent passed the impugned order dated 20-6-2004 making the petitioner to retire with retrospective effect from 30-6-2004.

Admittedly, no notice was issued before changing the date of birth and once the date of birth is entered after assessing the age of the employee by a Medical Officer of the Corporation, the same shall become final and if the Corporation wants to take any action, they cannot take without providing any opportunity to the petitioner.

Having regard to the facts and circumstances of the case and for the aforesaid reasons, the said impugned order is set aside and the Writ Petition is allowed. However, it is open for the respondent to issue notice and take appropriate action in accordance with law if they are entitled to do so.

(V.ESWARAIAH,J)

30th September, 2004.

Tsy/Kvrk

To

1 The Vice Chairman & Managing Director,
APSRTC., Musheerabad,

Hyderabad.

2 The Regional Manager,
APSRTC, Kurnool Region,
Kurnool District.

3 The Depot Manager,
APSRTC, Kurnool-I Bus Depot,
Kurnool District.

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